

**Toffel, Melissa**

---

**From:** Sizemore, Joe M <Joe.M.Sizemore@wv.gov>  
**Sent:** Tuesday, May 14, 2013 2:43 PM  
**To:** Difiore, Theresa; Barbieri, Andrea; amend, carol; Cox, Ken; Pratt, Stacie  
**Cc:** Porter, Ruth M  
**Subject:** RE: Agenda for the May 28 WV Enforcement Call  
**Attachments:** Martin Ernest #UST-13-001 unilateral 08 22 12.pdf

Some FYI. See attached. This is the Order that was issued to Mr. Martin and will provide you with some basic background information. Thanks. Joe.

Joseph M.Sizemore  
Assistant Chief Inspector  
EE – HW / UST  
WVDEP  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
(304) 926-0470

---

**From:** Difiore, Theresa [mailto:Difiore.Theresa@epa.gov]  
**Sent:** Tuesday, May 14, 2013 2:23 PM  
**To:** Barbieri, Andrea; amend, carol; Cox, Ken; Sizemore, Joe M; Pratt, Stacie; Porter, Ruth M  
**Subject:** Agenda for the May 28 WV Enforcement Call



Hi everyone -- the following agenda item has been submitted by Ruth Porter for the Enforcement call scheduled for Tuesday, May 28<sup>th</sup> at 10:30.

**We would like to add a discussion concerning Ernest Martin to the agenda for the upcoming May 2013 enforcement meeting call. Mr. Martin owned USTs in northern WV which we believe that he illegally removed. We also believe that he may have transported the USTs, potentially hazardous waste from the USTs, and petroleum impact soil from the WV UST location to his place in Maryland. We have made multiple attempts to take enforcement action against Mr. Martin but are having difficulties since he lives in Maryland.**

Thanks

Terri

# Theresa DiFiore

Inspection & Data Coordinator  
Senior Environmental Employment Program  
Land and Chemicals Division  
Office of Land Enforcement (3LC70)  
Phone: 215-814-5165

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

This Email message contained an attachment named  
image001.jpg

which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: 304-926-0470 Fax: 304-926-0457

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

August 22, 2012

Ernest Martin  
4906 Garrett HWY  
Oakland, MD 21550

**CERTIFIED RETURN RECEIPT REQUESTED**

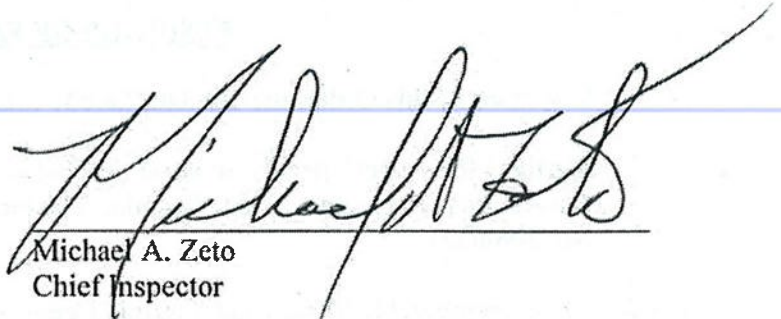
**WV IDENTIFICATION NO.: 3-906331**

**91 7199 9991 7031 5497 5162**

---

Ernest Martin:

Enclosed is Order No. UST-13-001 dated August 22, 2012. This Order is issued to Ernest Martin by the director of the Division of Water and Waste Management under the authority of Chapter 22, Article 17, Section 15 of the Code of West Virginia. This Order contains notification of the right of appeal under the provisions of Chapter 22, Article 17, Section 18.



Michael A. Zeto  
Chief Inspector

cc: Scott G. Mandirola, Director, DWWM (via e-mail)  
Joseph Sizemore, ACI, EE/HW&UST  
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)  
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)  
Laura McGee, Environmental Resources Specialist, EE (via e-mail)  
Ruth M. Porter, Program Manager, EE/UST (via e-mail)  
Ted Wisner, Environmental Inspector, EE/UST (via e-mail)  
Carol Amend, US EPA, Region III (via e-mail)

*revised September 2011*



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: 304-926-0470 Fax: 304-926-0457

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**ORDER  
ISSUED UNDER THE  
UNDERGROUND STORAGE TANK ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 17**

TO: Ernest Martin  
4906 Garrett HWY  
Oakland, MD-21550

DATE: August 22, 2012

ORDER NO.: UST-13-001

**INTRODUCTION**

The following findings are made and Order issued to Ernest Martin (hereinafter "Martin") pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 17, Section 1 et seq. of the Code of West Virginia.

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. Martin is the owner/operator of three (3) Underground Storage Tanks (USTs) located at Aurora, Preston County, West Virginia. The facility operates under WV Identification No. 3-906331.
2. On September 24, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel performed a records review. During the records review, the following violation of WV Legislative Rules was observed and documented:
  - a. 33CSR31 Section 4.5 – The owner/operator failed to make full, timely payment of underground storage tank registration fees.

As a result of this violation, Notice of Violation (NOV) No. 0909-0075 was issued to Martin.

3. On September 7, 2010, Unilateral Order No. UST-10-053 was issued to Martin for failure to pay UST registration fees. The Order required full payment of fees within ten (10) days. Payment has not been received by WVDEP.

4. On April 7, 2012, a report was filed with the WVDEP Emergency Spill Line. The anonymous caller alleged that workers had illegally removed USTs at Martin's facility during the night.
5. On April 7, 2012, a WVDEP Environmental Inspector responded to the complaint. The inspector was denied entry into the site; however, the inspector was able to observe the site from the public portion of the facility and from adjacent properties. The inspector observed and documented that the soil was disturbed in the area of the UST pit, unconnected fuel delivery lines were protruding from the area of disturbed soil, and a vent line was lying on the ground near a dispensing pump.
6. On April 25, 2012, WVDEP personnel sent Martin an Information Request (attached) concerning the suspected illegal removal of USTs from the facility. Martin failed to respond to the information request, a violation of WV State Code 22-17-13.

#### **ORDER FOR COMPLIANCE**

And now, this day of August 22, 2012, Martin is hereby ORDERED by the Director as follows:

1. Martin shall immediately take measures to initiate compliance with all terms and conditions of this Order.
2. Within ten (10) days of the effective date of this Order, Martin shall remit full payment of all back UST fees in the amount of two thousand eight hundred thirty-five dollars (\$2,835) (invoice attached). Payment shall be made to the West Virginia Department of Environmental Protection (WVDEP) for deposit in the Underground Storage Tank fund. The fees shall be submitted to:

**Program Manager, WVDEP/UST  
Environmental Enforcement - Mail Code #031327  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

3. Within sixty (60) days of the effective date of this order, Martin shall submit a response to WVDEP's Information Request, dated April 25, 2012. If the USTs have been removed from the facility, this response shall include a closure report concerning the permanent closure of the USTs at the facility. The closure report shall include, but not be limited to, information regarding: the entity that removed the USTs; cleaning of the USTs; disposition of the tank contents/cleaning liquids; disposition of the USTs; and post-closure site assessment sampling performed by a Class B certified individual, in accordance with the permanent tank closure guidance and 40 CFR Subpart G.

Response to the information request and two (2) copies of the closure report shall be submitted to:

**Program Manager, WVDEP/UST  
Environmental Enforcement - Mail Code #031327  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

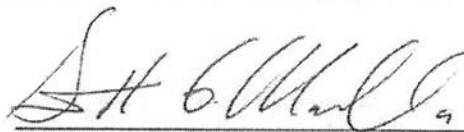
### OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Martin of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Martin to additional enforcement action in accordance with the applicable law.
2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on Martin, its successors and assigns.
4. This Order shall terminate upon Martin's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

### RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Chapter 22, Article 17, Section 18 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.



\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management





# UNDERGROUND STORAGE TANK REGISTRATION INVOICE

PHONE: (304) 926-0499 ext 4888  
FAX: (304) 926-0481

Department of Environmental Protection Page 1 of 3  
Division of Water and Waste Management(UST Program)  
601 - 57th Street  
Charleston WV 25304

INVOICE NO: 00278459  
Invoice Date: 03/07/2012  
Remit By: 05/31/2012

**Owner**  
MARTIN, ERNEST  
4906 GARRETT HWY  
OAKLAND, MD 21550

**Facility**  
3-906331 - BISHOP CONVICIENCE STORE  
BOX 345 RT 50  
AURORA, WV 28705

Annual UST registration fees are issued pursuant to the WV Underground Storage Tank Act (22-17). 2004 fees are \$90 for each petroleum and \$65 for each hazardous substance UST. Misc. fees indicate past due fees or credits: 1988 was \$20.41/tank; 1989 was \$31.00/tank; 1990, 1991 and 1992 was \$45.00/tank; 1993, 1994 and 1995 was \$50.00/tank; 1996 and 1997 was \$25.00/tank; 1998, 1999, 2000, 2001, 2002 and 2003 was \$50.00/tank. After 30 days a 50% late fee applies.

Tank ID	Capacity in Gal.	Substance	Transaction Description	Amount
1	4000	Gasoline	2005 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2005 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2005 Base Fee : Base Fee	\$90.00
1	4000	Gasoline	2006 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2006 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2006 Base Fee : Base Fee	\$90.00
1	4000	Gasoline	2007 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2007 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2007 Base Fee : Base Fee	\$90.00
			2007 Late Fee : Late fee	\$135.00
1	4000	Gasoline	2008 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2008 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2008 Base Fee : Base Fee	\$90.00

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

PLEASE DO NOT STAPLE

Billed To: MARTIN, ERNEST  
4906 GARRETT HWY  
OAKLAND, MD 21550  
Facility: 3-906331

INVOICE NO: 00278459  
INVOICE DATE: 03/07/2012  
REMIT BY: 05/31/2012  
AMOUNT DUE: \$2,835.00

REMIT TO:  
DEP - UST PROGRAM  
P O BOX 40266  
CHARLESTON WV 25364-0266

To pay this invoice with a credit card, please call 304-926-0499 ext 4888. Only Visa and MasterCard are accepted.

22800240283500053120120000027845939063313325



# UNDERGROUND STORAGE TANK REGISTRATION INVOICE

PHONE: (304) 928-0499 ext 4888

FAX: (304) 928-0481

Department of Environmental Protection  
Division of Water and Waste Management(UST Program)  
801 - 57th Street  
Charleston WV 25304

Page 2 of 3

INVOICE NO: 00278459

Invoice Date: 03/07/2012

Remit By: 05/31/2012

**Owner**

MARTIN, ERNEST  
4906 GARRETT HWY  
OAKLAND, MD 21550

**Facility**

3-906331 - BISHOP CONVICIENCE STORE  
BOX 345 RT 50  
AURORA, WV 26705

Annual UST registration fees are issued pursuant to the WV Underground Storage Tank Act (22-17). 2004 fees are \$90 for each petroleum and \$85 for each hazardous substance UST. Misc. fees indicate past due fees or credits: 1988 was \$20.41/tank; 1989 was \$31.00/tank; 1990, 1991 and 1992 was \$45.00/tank; 1993, 1994 and 1995 was \$50.00/tank; 1996 and 1997 was \$25.00/tank; 1998, 1999, 2000, 2001, 2002 and 2003 was \$50.00/tank. After 30 days a 50% late fee applies.

Tank ID	Capacity in Gal.	Substance	Transaction Description	Amount
1	4000	Gasoline	2008 Late Fee : Late fee	\$135.00
2	4000	Gasoline	2009 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2009 Base Fee : Base Fee	\$90.00
1	4000	Gasoline	2009 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2009 Late Fee : Late fee	\$135.00
3	4000	Gasoline	2010 Base Fee : Base Fee	\$90.00
1	4000	Gasoline	2010 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2010 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2010 Base Fee : Base Fee	\$90.00
1	4000	Gasoline	2010 Late Fee : Late fee	\$135.00
2	4000	Gasoline	2011 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2011 Base Fee : Base Fee	\$90.00
1	4000	Gasoline	2011 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2011 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2011 Late Fee : Late fee	\$135.00





# UNDERGROUND STORAGE TANK REGISTRATION INVOICE

PHONE: (304) 928-0499 ext 4888  
FAX: (304) 928-0481

Department of Environmental Protection Page 3 of 3  
Division of Water and Waste Management(UST Program)  
601 - 57th Street  
Charleston WV 25304

INVOICE NO: 00278459  
Invoice Date: 03/07/2012  
Remit By: 05/31/2012

**Owner**  
MARTIN, ERNEST  
4906 GARRETT HWY  
OAKLAND, MD 21550

**Facility**  
3-906331 - BISHOP CONVIENCE STORE  
BOX 345 RT 50  
AURORA, WV 26705

Annual UST registration fees are issued pursuant to the WV Underground Storage Tank Act (22-17). 2004 fees are \$90 for each petroleum and \$65 for each hazardous substance UST. Misc. fees indicate past due fees or credits: 1998 was \$20.41/tank; 1999 was \$31.00/tank; 1990, 1991 and 1992 was \$45.00/tank; 1993, 1994 and 1995 was \$50.00/tank; 1996 and 1997 was \$25.00/tank; 1998, 1999, 2000, 2001, 2002 and 2003 was \$50.00/tank. After 30 days a 50% late fee applies.

Tank ID	Capacity in Gal.	Substance	Transaction Description	Amount
1	4000	Gasoline	2012 Base Fee : Base Fee	\$90.00
2	4000	Gasoline	2012 Base Fee : Base Fee	\$90.00
3	4000	Gasoline	2012 Base Fee : Base Fee	\$90.00
PLEASE PAY THIS AMOUNT >>>>				\$2,835.00

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as an image transaction. For inquiries, please call 1-888-243-9010.

When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment, and you will not receive your check back from your financial institution.



---

west virginia department of environmental protection

---

Environmental Enforcement  
Hazardous Waste/Underground Storage Tanks  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: 304-926-0470 FAX: 304-926-0457

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

April 25, 2012

Ernest Martin  
4906 Garrett Hwy  
Oakland, MD 21550

**CERTIFIED RETURN RECEIPT REQUESTED**

**RE: Bishop's Convenience Store, WV ID No. 3-906331**

Dear Mr. Martin:

The West Virginia Department of Environmental Protection (WVDEP) has reason to suspect that the three (3) registered Underground Storage Tanks (USTs) located at the Bishop's Convenience Store were removed without proper notification being submitted to the WVDEP. The WVDEP is currently pursuing potential enforcement action involving WV Underground Storage Tank (UST) violations. This action is being taken under the provisions of the UST Act (WV Code Chapter 22, Article 17). As part of this action, WVDEP requests that owner/operator provide information pursuant to WV Code Chapter 22, Article 17, Section 13 for the UST system located at Bishop Convenience Store, WV ID No. 3-906331.

For your facility, provide the following information on the status of the USTs registered at the facility:

- 1) Has any registered UST at the facility been removed from the ground? If the USTs have been removed from the ground, provide the following information concerning the removal.
  - a. On what date were the USTs removed? Was associated piping removed with the USTs?
  - b. Provide the name and address for the person(s) who authorized the removal of the UST system?
  - c. Provide the name and address for person(s) who performed the UST system removal.
  - d. Were the USTs transported off site for disposal or recycling? Where were the USTs transported to? Who transported the USTs to the disposal/recycling location?

Promoting a healthy environment.

- e. How much residual tank contents were removed from the USTs? What is the disposition of the material removed from the USTs? Is it containerized and stored on-site or was it removed from the site? If removed, provide the name and address of the disposal facility and the name and address of the transporter?
- f. Were the USTs properly cleaned on site prior to being taken for disposal/recycling? Was the cleaning liquid containerized and stored on-site or was it removed from the site? If removed, provide the name and address of the disposal facility and the transporter?
- g. Was petroleum impacted soil detected during the UST removal? Was the soil stockpiled on site or removed from the site. If removed, provide the name and address of the transporter and the name and location of the disposal facility/location.
- h. Was a WV Class "B" certified worker present for the tank removal? If so, please provide the name, contact information, and the certified worker certificate number for the Class "B" person.
- i. Was soil sampling performed in accordance with WVDEP requirements for tank closure? If so, please provide a copy of the analytical data, site sketch showing sampling locations, and any photos taken of the site.

2) Provide the following information about the UST system:

- a. Provide leak detection records for the last 12 months?
- b. Provide cathodic protection (CP) tests for the last two CP testing events.
- c. Provide the current financial responsibility (pollution liability insurance) coverage for the UST system.

I certify that the information contained in this response to WVDEP's request for information, based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, is, to the best of my knowledge and belief, true, accurate and complete. As to the identified portions of this response for which I cannot personally verify its accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

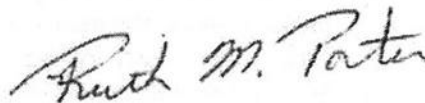
Date: \_\_\_\_\_

Please provide this information within fourteen (14) days of receipt of this correspondence. All information shall be submitted to:

Ruth Porter, UST Program Manager  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304

Your failure to provide the requested information is a violation of WV Code Chapter 22, Article 17, Section 1 et. seq. Your prompt attention is appreciated.

Sincerely,



---

Ruth M. Porter  
UST Program Manager

cc: Joseph Sizemore, Assistant Chief Inspector, EE/HW&UST (via e-mail)  
Patty Perrine, UST Inspector Supervisor, EE/UST (via e-mail)  
Ted Wisner, Environmental Inspector, EE/UST (via e-mail)

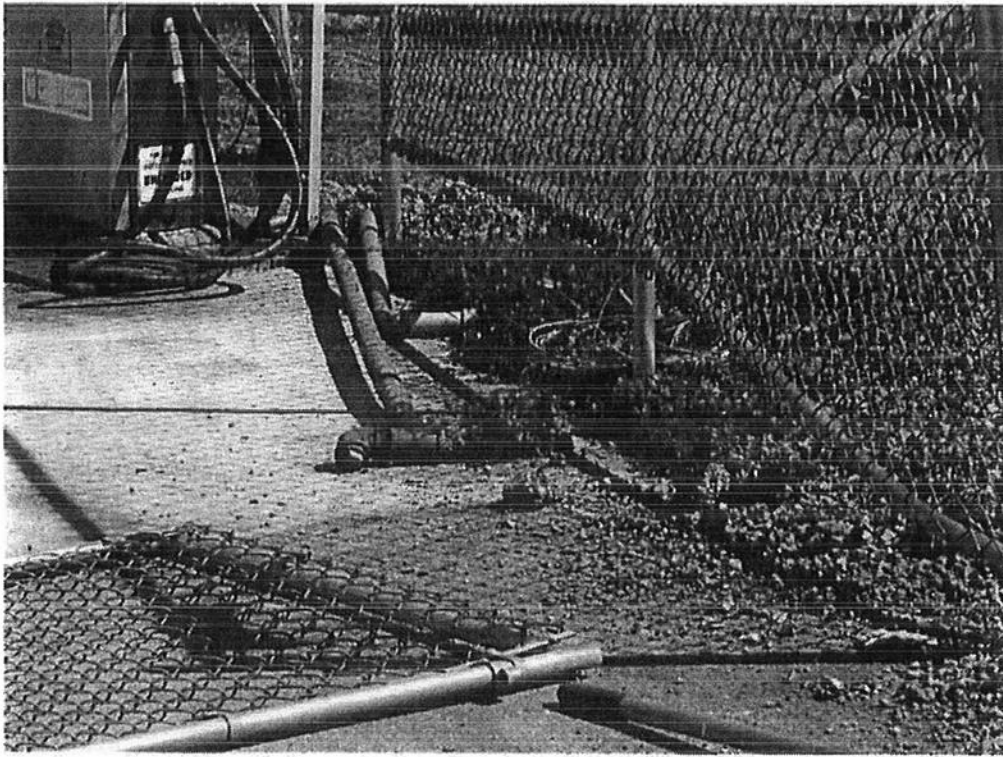




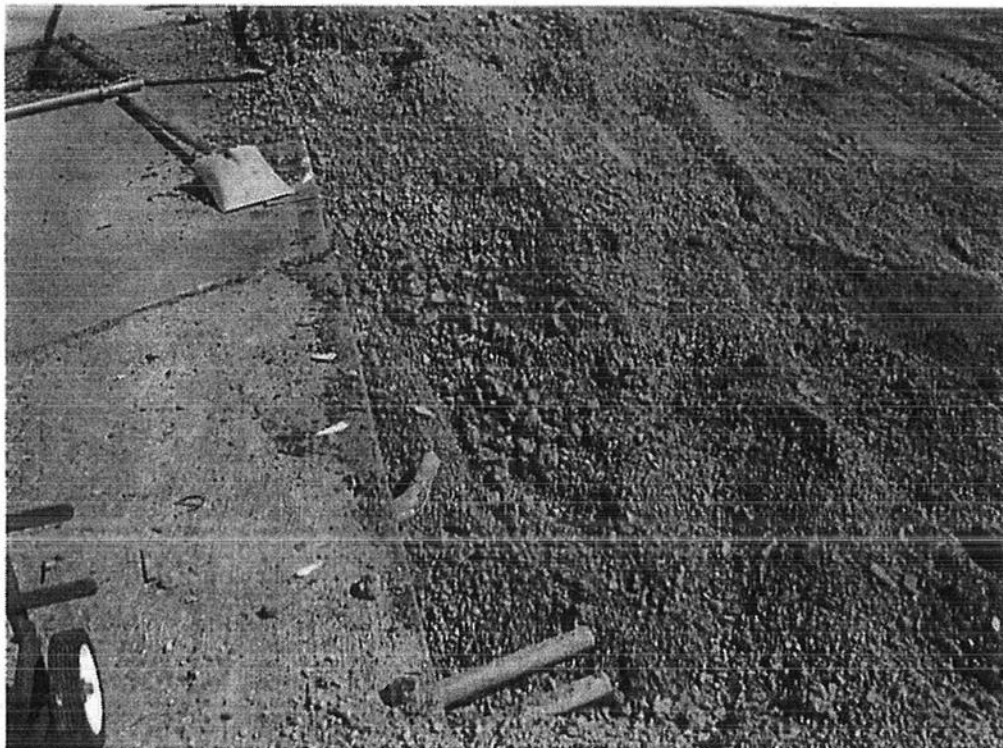
Area of disturbed soil where the UST tank field was known to be located



Vent lines and UST piping loaded onto a truck



Disconnected vent line and underground piping near the area of disturbed soil



Cut underground piping in the area of disturbed soil where UST tank field was known to be located